

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

**MASONRY INDUSTRY TRUST
ADMINISTRATION, INC.,**

Plaintiff,

v.

DEFRANG & COMPANY, LLC, et al.,

Defendants.

No. 3:11-cv-01316-ST

OPINION AND ORDER

MOSMAN, J.,

On May 21, 2012, I entered a partial default judgment [18] as to defendant DeFrang and Company, LLC, thereby entitling plaintiff to reasonable attorney fees and costs. Plaintiff's counsel seeks \$2,062.50 in attorney fees [19] and \$487.00 in costs [20]. Defendant did not respond. For the following reasons, I award plaintiff the full amounts requested in each motion.

DISCUSSION

I. Attorney Fees

In order to establish the amount of attorney fees that plaintiff's counsel should recover, I "must first determine the presumptive lodestar figure by multiplying the number of hours reasonably expended on the litigation by the reasonable hourly rate." *Intel Corp. v. Terabyte Intern., Inc.*, 6 F.3d 614, 622 (9th Cir. 1993) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). In appropriate cases, I may then "adjust the 'presumptively reasonable' lodestar figure

based upon the factors listed in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–70 (9th Cir.1975). . .that have not been subsumed in the lodestar calculation.” *Id.* (quoting *D'Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379, 1383 (9th Cir.1990)). Plaintiff’s counsel, Bradley Middleton, requests \$2,062.50 in attorney fees based on 12.5 hours of work.

A. Reasonable Hourly Rate

The burden is on the party seeking fees to show “that the requested rates are in line with those prevailing in the community for similar services of lawyers of reasonably comparable skill and reputation.” *Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1263 (9th Cir. 1987). Mr. Middleton’s requested hourly rate is \$165.00. In determining whether this rate is reasonable, I begin with the 2007 Oregon State Bar Economic Survey (“2007 OSB Survey”) as an “initial benchmark.” *Toth v. INA Life Ins. Co. of New York*, 08–653–JE, 2010 WL 170260, at * 6 (D. Or. Jan. 13, 2010) (quoting *Roberts v. Interstate Distrib. Co.*, 242 F. Supp. 2d 850, 857 (D. Or. 2002)). According to the 2007 OSB survey, Mr. Middleton, who had approximately 22 years of experience while working on this case, requests an hourly rate well below the average hourly rate for lawyers practicing in the Portland metropolitan area with similar years of experience.¹ Therefore, I find that Mr. Middleton’s requested hourly rate of \$165.00 is reasonable.

B. Number of Hours Reasonably Expended on the Litigation

Plaintiff’s counsel asserts that he reasonably expended 12.5 hours on this litigation. I have reviewed counsel’s billing invoice submitted in connection with plaintiff’s motion for attorney fees, (*see* Mot. for Atty. Fees [19] 6–7), and find that it was reasonable for Mr. Middleton to spend 12.5 hours on this case.

¹ Mr. Middleton’s practice is located in Tigard, Oregon. According to the 2007 OSB Survey, for lawyers practicing in Portland with 21–30 years of experience, the average hourly rate, without regard to practice area, was \$277. Lawyers practicing in the tri-county area with 21–30 years of experience charged \$226 per hour on average. Therefore, Mr. Middleton’s requested hourly rate is substantially less regardless of which 2007 OSB Survey location is used.

C. Lodestar Calculation

In considering the *Kerr* factors, I have determined that no adjustment is necessary.

Therefore, I award plaintiff's counsel \$2,062.50 in attorney fees for his time spent on this matter.

II. Costs

Plaintiff requests \$487.00 in costs, including \$350 for fees of the Clerk and \$137.00 in fees for service of summons. Because these requested costs are expressly recoverable pursuant to 28 U.S.C. § 1920, I award plaintiff \$487.00. *See also Roberts*, 242 F. Supp. 2d at 861.

CONCLUSION

Plaintiff's Motion for Attorney Fees [19] is GRANTED. Plaintiff's Bill of Costs [20] is GRANTED. Plaintiff shall recover \$2,062.50 in attorney fees and \$487.00 in costs, for a total of \$2,549.50.

IT IS SO ORDERED.

DATED this 10th day of August, 2012.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge